

**Fiscal Year 2010 DEQ Fee Proposal  
Underground Storage Tank Fees  
November 2008**

## **Overview - Storage Tank Program**

The Department of Environmental Quality (DEQ), Waste and Hazardous Materials Division (WHMD), administers Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and Sections 29.5c to 29.5o of the Fire Prevention Code, 1941 PA 207, as amended (Act 207). The Underground Storage Tank Program under Part 211 and Aboveground Storage Tank Program under Act 207, collectively the Storage Tank Program (Program), include the following major activities:

- Review and approve engineering plans for new underground storage tank (UST) systems.
- Oversee and certify the installation of new UST systems.
- Review and approve engineering plans for all certified aboveground storage tank (AST) systems containing flammable or combustible liquids, liquefied petroleum gases, compressed natural gas, liquefied natural gas, and liquid or gaseous hydrogen.
- Review and approve site assessments for UST system removals to ensure that no contamination remains.
- Review every site's insurance or other bond each year to verify they have adequate financial coverage for a potential release for all active UST sites.
- Inspect all active regulated UST systems and certified AST systems at least once every three years.
- Review and approve rule variances, products, and methods for UST system and AST system design, installation, and operation.
- Process updated registrations.
- Issue invoices and process annual fee payments.
- Respond daily to a high volume of Freedom of Information Act requests on UST records for individual sites.
- Approval of products for use in UST and AST systems.

Core Program staffing needed to administer the Program throughout the state is estimated to be 38.5 full-time equivalent (FTE) positions represented by the following:

Inspections: 28

Plan Review/Variances: 2.5

Financial Record Review: 0.8

Product Approval: 1

Enforcement: 0.7

Registration/Data Management/Fee Collection: 4

Rule and Policy Development: 1.5

**Fiscal Year 2010 DEQ Fee Proposal  
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November 2008**

## **Program Funding**

The Program is supported as follows:

- Underground Storage Tank Regulatory Enforcement Fund (UST Fund) created under Section 21104 of Part 211. The primary revenue source for the UST Fund is the registration fee established under Section 21102(8) of Part 211. Owners of UST systems pay an annual registration fee of \$100 for each tank in the UST system. Under Section 21104(3), the DEQ must suspend collection of the registration fee from existing UST systems if the UST Fund balance at the close of a fiscal year (FY) exceeds \$8 million. Collection of the registration fees can resume after the close of any succeeding FY when the amount in the UST Fund falls below \$4 million.
- The Program receives minimal support from the U.S. Environmental Protection Agency (U.S. EPA) in the form of an annual grant from \$286,000 to \$500,000 per year. For state FYs 2007 through 2010, the DEQ has successfully pursued additional one-time federal grant monies for the upfront costs to implement the new UST requirements (e.g., developing an operator training and testing program) under the federal Energy Policy Act of 2005 (EPAct).
- Hazardous Materials Storage Tank Regulatory Enforcement Fund (AST Fund) created under Section 29.5d of Act 207. The primary revenue source for the AST Fund is the yearly certification fee and, to a lesser extent, the plan review application fee established under Section 29.5d(2). Owners of AST systems pay an annual certification fee of \$61.50 for each tank in the AST system. In addition, owners of AST systems pay an installation application fee of \$203 for each tank prior to installation.
- In FY 2009 the Program received almost \$1.4 million in General Fund (GF) dollars in lieu of fee increases to support continued operations at the core Program staffing level.

**Fiscal Year 2010 DEQ Fee Proposal  
Underground Storage Tank Fees  
November 2008**

Current funding of the Storage Tank Program:

<b>Revenue Source</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>General Fund</b>	\$0	\$0	\$1,398,500
<b>Federal Funds</b>	\$286,000	\$500,000	\$500,000
<b>AST Fees</b>	\$544,000	*\$490,000	*\$490,000
<b>UST Fees</b>	\$2,086,000	*\$1,930,000	*\$1,890,000
<b>Total</b>	\$2,916,000	*\$2,920,000	*\$4,279,500

\*Estimated

The DEQ is not seeking an increase in AST fees at this time. With the addition of GF dollars to the Program, the AST fees are adequate to support the core Program level of staffing and services through FY 2013. However, even with the addition of GF dollars, the current UST registration fee does not generate enough revenue to support the core Program level of staffing and services beyond FY 2009.

### **Proposed Program Funding Change**

Current UST fee revenue is approximately \$1.9 million per year. The proposal is to increase UST fees by 2013 to \$2.8 million to ensure that the WHMD can maintain the core Program level of staffing and services. Revenue projections are based on a declining number of storage tanks (about a 2 percent decrease per year) and take into account inflationary increases in expenditures. The cost of living/inflation increases have been addressed by assuming a 2.65 percent per annum inflationary factor, based on the Detroit Consumer Price Index, and applying that increase to projected expenditures.

Assuming the same level of GF, sufficient revenue can be generated by increasing the UST fees as follows:

- By 2013, incrementally increase the annual UST registration fee from \$100 to \$150 per tank.
- Implement a plan review/installation application fee of \$250 per tank for UST systems.
- Implement a reinspection fee of \$500 per tank for UST systems.

**Fiscal Year 2010 DEQ Fee Proposal**  
**Underground Storage Tank Fees**  
**November 2008**

**Proposed Underground Storage Tank (UST) Fee Schedule**

Type	Description	Current Fee	Proposed Fee
UST Registration Fee	Annual fee for private USTs greater than 1,100 gallons and all commercial UST systems containing regulated product	\$100	FY 2010 – \$125 FY 2011 – \$135 FY 2012 – \$145 FY 2013 – \$150
UST Plan Review/Installation Application Fee	Fee for the review and approval of plans for the installation of USTs	\$0	\$250
Reinspection Fee	Fee for the reinspection of UST facilities when the DEQ has made notification that delivery to a tank is prohibited due to noncompliance (red tag)	\$0	\$500

The \$250 plan review/installation application fee for UST systems was added for equity. The plans for USTs have been reviewed by DEQ engineering staff in the same manner as the plans for AST systems, while the AST systems have been the only tanks subject to the installation application fee. Approximately 100 UST plan reviews are completed each year, so this fee would raise about \$25,000 in additional revenue.

As a deterrent to chronic noncompliance, and in recognition of the additional burden that chronic noncompliance is on DEQ resources, a reinspection fee of \$500 per facility is also proposed. When an owner of a tank repeatedly fails to correct a violation, the DEQ makes notification that delivery of product to the tank is prohibited (red-tagged). The \$500 reinspection fee would have to be paid and the violation corrected before the DEQ would remove the notification (red-tag) under this proposal. The DEQ red-tags less than 10 percent of the facilities inspected, so this proposal is expected to generate less than \$100,000 in revenue each year, and this amount is expected to decrease over time as a result of increased compliance.

Lastly, to eliminate the practice of an owner evading fees by transferring ownership to a related person (individual, corporation, etc.), the DEQ proposes to hold the current UST owner liable for all fees. While the increased revenue from this change would not be substantial, it would significantly increase the efficiency of the fee collection system by minimizing the need for the DEQ to track down former owners who feel little incentive to pay. Since 1990, approximately \$1.9 million in uncollected fees is attributed to previous owners.

**Fiscal Year 2010 DEQ Fee Proposal**  
**Underground Storage Tank Fees**  
**November 2008**

**Evaluation of Need for Proposed Program Funding Change**

The current fee amounts for ASTs and USTs were established in 1993 and 1988, respectively. The annual AST registration fee was increased from \$35 to \$61.50 per tank in 1993. As indicated above, the DEQ is not seeking an increase in the AST fees at this time. The annual UST registration fee of \$100 per tank was established in 1988 and has never been increased. Inflation alone has substantially reduced the value of this fee revenue over the past 20 years. Additionally, the universe of USTs on which the fee is paid each year has decreased substantially over time, from approximately 50,000 tanks in 1991 to approximately 19,900 tanks as of October 1, 2008. While the number of tanks is expected to continue to decline, the number of inspected facilities will only decline slightly, and there will be no corresponding decrease in the number of inspections required. In fact, as noted below, the Program is under pressure to increase the frequency of inspections.

In order to reduce Program costs, the WHMD has held vacant the Jackson District Supervisor position since 2002, while we continued to evaluate workload. The WHMD has concluded that the vacant Jackson District Supervisor position should be filled. This will ensure Program continuity and integrity in each district office. This long-term vacancy in Jackson has required remote supervision, making it difficult to provide consistent support to staff. In addition, the regulated community is impacted by a reduced availability for WHMD management to attend controversial or technically challenging meetings, possibly resulting in delays for resolution. This has also resulted in increased costs for travel.

While fee revenues have been diminishing, demands on the Program have been increasing. Recent examples of those increased demands include the following:

- EPAct mandate to increase inspection frequency of UST systems to every 3 years. Current frequency achieved is approximately every 3.4 years.
- EPAct mandate to develop and administer an operator training and testing program for UST systems.
- Promulgation and administration of new rules for the storage, handling, and dispensing of gaseous and liquid hydrogen. (Michigan is the first state in the country to develop rules for this emerging technology.)
- Review and approval of new products for the storage and dispensing of alternative fuels (e.g., E85).

The DEQ cannot maintain the core Program level of staffing and services, let alone meet the increasing demands, with the current level of fee revenue. Without the proposed fee increases or other sources of revenue, Program reductions will be necessary in FY 2010.

**Fiscal Year 2010 DEQ Fee Proposal  
Underground Storage Tank Fees  
November 2008**

Examples of the negative effects of a diminished Program (fewer staff) are as follows:

- Loss of federal grant funds due to failure to meet federal mandates for the regulation of UST systems. This could jeopardize both federal UST and LUST federal grant funding to Michigan as stated in Section 1522(f)(2)(C)(ii)(III) of the EPAct. Lack of enforcement of the regulations enforced by the EPAct outlines this course of action by the removal of federal funds.
- Inability to inspect all new tank installations before they are put into service, increasing the potential for releases and fires due to the use of inappropriate equipment or installation methods.
- Reduced frequency of inspections, increasing the potential for releases or fires at noncompliant tank systems.
- More confirmed releases resulting in an increased workload and financial burden on the Leaking Underground Storage Tank Program.
- Approval of new tank system plans by default due to the inability to provide timely review of installation applications within statutory time frames.
- Inability to review and approve/disapprove new products, limiting the use of more effective and economical equipment or not allowing substandard equipment in AST and UST systems in Michigan.
- Loss of technical expertise due to the inability to fund DEQ staff participation in state and national work groups and committees for fire safety, leak detection, and corrosion prevention and other critical engineering aspects of tank systems.
- Delayed adoption of the latest national codes for fire safety.

**Improvements, Efficiencies, and Program Reductions**

The DEQ has improved the administration of the Program by collaborating with stakeholders, other agencies, and national code associations in the development of new standards and rules and in educating and assisting the regulated community.

The DEQ is implementing changes to the fee invoicing system that will result in long-term accounting improvements and better customer service.

Cost savings have been realized with the reduction in the number of district Hazardous Materials Storage Inspectors from 24 to 20 in the late 1990s and a reduction in the number of Lansing Program staff from 22 to 13 due to attrition and the DEQ reorganization in 2002.